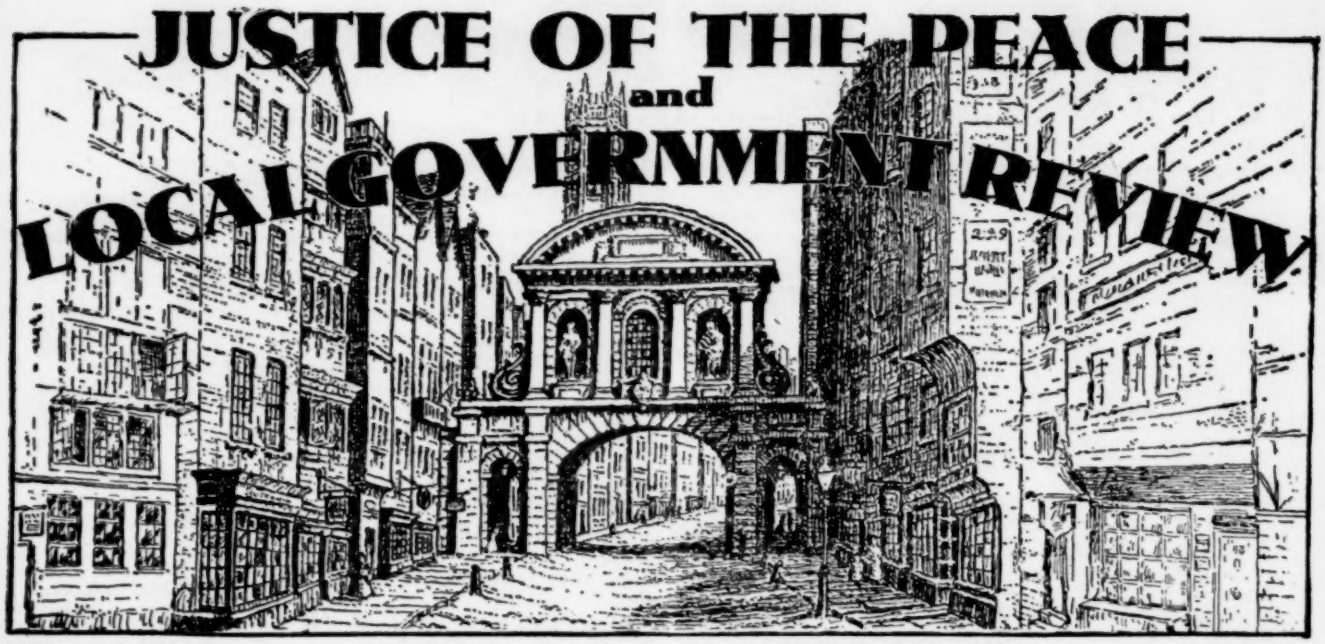


VOL. CXVIII LONDON: SATURDAY, NOVEMBER 27, 1954 No. 48

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## REPORTS

# Official & Classified Advertisements, etc.

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**NOTIFICATION OF VACANCIES ORDER, 1952**

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note* : Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

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Further particulars and application forms may be obtained from the Town Clerk, Town Hall, Birkenhead. Closing date—December 7, 1954.

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APPLICATIONS are invited for the above appointment. Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving officers.

The appointment will be subject to the Probation Rules, 1949 to 1954, and the salary in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination, and will be stationed at Staple Hill, near Bristol.

Applications, stating date of birth, present position and salary, previous employment, qualifications and experience, together with copies of two recent testimonials, must reach me not later than December 11, 1954.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

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Applications, together with copies of three recent testimonials, must be received by me not later than December 11, 1954.

GEORGE NORTON,
Clerk of the Committee.

Shire Hall,
Nottingham.

## COUNTY BOROUGH OF WEST HARTLEPOOL MAGISTRATES' COURTS COMMITTEE

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APPLICATIONS are invited for the appointment of a Junior Assistant Clerk in my office. Applicants should be 21 to 25 years of age and have completed or be exempt from Military Training. They should have some experience of work in an office of a Justices' Clerk or of a solicitor and should have some knowledge of or be prepared to learn shorthand and typing. Salary will be in accordance with the National Joint Council General Division scale.

Applications in writing to be made not later than Wednesday, December 15, 1954, giving full particulars of age, education and experience, together with the names and addresses of two persons as referees.

L. J. POTTS,
Clerk to the Magistrates' Courts Committee.

Rockhaven,
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The post is superannuable subject to medical examination. Canvassing will disqualify, and applicants must disclose in writing any relationship to members or chief officers of the Council.

Applications, giving details of qualifications and experience and with the names of two referees, should reach me by Monday, December 6, 1954.

HAROLD AYREY,
Town Clerk.

Town Hall,
South Shields.

*Amended Advertisement*

## BOROUGH OF HENDON

**Assistant Solicitor**

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Experience in Local Government and in advocacy will be an advantage.

The appointment is subject to the National Scheme, to the Local Government Superannuation Acts and to the passing of a medical examination.

Applications, stating age, qualifications, details of education and experience, date of admission and full details of present appointment, and giving the names and addresses of three referees, must be delivered to the undersigned by December 6, 1954.

Canvassing will disqualify.

R. H. WILLIAMS,
Town Clerk.

Town Hall,
Hendon, N.W.4.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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# NOTES of the WEEK

## Dangerous Dogs

A correspondent has called our attention to a decision last year of Newport magistrates which seems at first sight to conflict with the answer we gave to P.P. 4 at p. 704, *ante*.

In the Newport case three dogs were alleged to have killed a number of cats and a dog. From the newspaper report which our correspondent has sent us it appears that no point was taken by the defence and that regret was expressed for the harm done by the dogs. The justices made an order that the dogs should be kept under control. There was some evidence that one person had been approached by the dogs and evidently put in some fear, and it is possible that this, coupled with the evidence of the fierceness of the dogs towards animals enabled the justices to come to the conclusion that they were justified in law in making the order, which was certainly desirable.

We see no reason to revise the answer we gave, and we are not criticizing the decision of the justices.

## Expert Evidence

In these days there are all sorts of experts, and these are not confined to a few professions. Indeed, it would be impossible to draw up a compete list of occupations from which experts can be drawn.

The expert must be shown to have some particular skill in some science, art or subject if his opinion is to be accepted as evidence. He may possess professional or academic qualifications which entitle him to be regarded as an expert, but his qualification may be by virtue of a particular official position or by virtue of experience.

When a question of foreign or colonial law is considered to necessitate the production of expert evidence, it is common practice to call a barrister who has made some study of that law, but that is not indispensable.

In *Said Ajami* v. *Comptroller of Customs* (*The Times*, November 9) the Judicial Committee of the Privy Council accepted the evidence of a bank manager who had had 24 years' experience in Nigeria, on a point of banking law about legal tender.

Mr. L. M. D. de Silva, in the course of delivering the judgment of the board, said it had been argued strenuously that upon a matter which involved a question of law no person who was not a professional lawyer could be regarded as a competent expert, but the board did not agree. He quoted authority and went on to say that a principle which emerged from the authorities considered together was that not only the general nature but also the precise character of the question upon which expert evidence was required had to be taken into account when deciding whether the qualifications of a person entitled him to be regarded as a competent expert. So the practical knowledge of a person who was not a lawyer might be sufficient in certain cases to qualify him as a competent expert on a question of foreign law.

The bank manager's opinion was admitted on the grounds that he conducted a business which made it his interest to take cognizance of what notes were legal tender in French West Africa ; that he did in fact take cognizance of what notes were legal tender in that country ; and that he spoke from adequate personal experience.

## Majority Verdicts

When receiving the new lord mayor at the Law Courts, the Lord Chief Justice made important observations on the system of trial by jury and the unfortunate results of disagreement involving new trials.

Lord Goddard said that disagreement had become more frequent of late, and it might be asked whether the time had not come for some change in the system so as to allow for a majority verdict in both civil and criminal cases. He observed that in Scotland there had been majority verdicts for centuries, and if in that country a majority verdict of eight to seven in a jury of 15 could be returned, he saw no likelihood of injustice if in this country a majority verdict of say nine to three were allowed. An alternative might be the reduction of the number of jurors from twelve to seven, which appeared to work satisfactorily during the war, though he doubted whether a majority verdict could be taken from so small a jury.

One other matter for consideration, said Lord Goddard, was whether, in the event of a juror or jurors having to be discharged for illness or any other cause, the court should not of its own motion have power to allow the case to proceed, provided the jury were not reduced below a certain number. Upon this point, it will be remembered, s. 15 of the Criminal Justice Act, 1925, makes provision for the continuance of the trial where a juror has to be discharged through illness or other cause, so long as the number of jurors does not fall below 10, but it is necessary for consent to be given in writing by both the prosecution and

the defence. The Lord Chief Justice suggested that the court should be able to act on its own motion, apparently without the need for such consent.

Suggestions of this kind, coming from so high an authority will undoubtedly receive serious consideration. If some such measures could be adopted there would be considerable saving of time of juries and witnesses and of consequent expense. Those people who shrink from the idea of majority verdicts in criminal cases can be reminded that Lord Goddard pointed out that in fact by far the greater number of indictable offences are now tried by justices who can decide by a majority.

## Arguments against Change

Opposition to the proposal was not slow in making itself heard. Sir Travers Humphreys, whose experience of criminal trials both as a member of the bar and a judge has rarely been equalled, expressed his views in a letter to *The Times*. Describing himself as brought up in the school of such lawyers as the first Lord Halsbury and Sir Harry Poland, K.C., Sir Travers referred to their faith in the unanimous verdict of a jury, and their way of adding that " a jury is always right." He is against altering a system which has been regarded as an important part of our unwritten constitution, which has worked well for a thousand years. To him unanimity of the jury is a principle to be preserved.

The suggestion that the jury is always right may be comforting, but it is not capable of proof. What is generally accepted and is probably true, is that a jury hardly ever makes a mistake by returning a verdict of guilty against an innocent person. That is of prime importance, but if, as many people of experience believe, juries acquit many defendants who ought to be convicted, that is unfortunate, although not so bad as convicting the innocent. When we say defendants who ought to be convicted, we do not mean those who are thought to be guilty but who are rightly acquitted because the evidence leaves room for reasonable doubt ; we mean those against whom there is sufficient evidence to justify conviction but who are acquitted by a jury when it is quite possible that another jury would have convicted, and when competent judges of evidence would have had no hesitation about convicting. We simply cannot believe the jury is always right.

Unanimity is a separate question. It may be doubted whether the unanimous verdict is always a sign that the jury is genuinely of one opinion. It may be that a minority, less forceful and less vocal than the rest, gives way for the sake of avoiding open disagreement and the necessity of a new trial. What objection is there to a verdict which would state the position plainly ? Most matters upon which decisions have to be made by a body of people are determined by a majority, sometimes with the proviso that it is to be a substantial majority. Again if nine out of twelve people are agreed, is it really essential that three, who may be less intelligent or more influenced by some prejudice than the rest, should be an insurmountable obstacle to an effective result of a trial ? These and other questions will assuredly be discussed in the press and elsewhere, as indeed they ought to be, when so eminent authorities are divided.

## Cyclists in One-way Streets

Some cyclists seem to be under the impression that they are entitled to wheel their bicycles against the line of traffic in a one-way street, and that the only offence is to ride them. When they act on this assumption they often add to the difficulties of other traffic and of pedestrians.

Our attention has been called to a letter in the *Maidenhead Advertiser* which refers to this practice. As it is signed " cyclist " there is no reason to think the writer has any prejudice against this class of road-users. He says that at rush hours it is common to see people wheeling their cycles up the High Street, which is a one-way street, and thus going against the stream of traffic. This, he states, adds to congestion, and the same practice may be observed in other one-way streets in the town.

Anyone who has occasion to travel on the Bath Road, which runs through Maidenhead, knows that Maidenhead is without a much-needed by-pass, and that the busy High Street presents a problem to the police in keeping traffic free from congestion. Anything that tends to increase that congestion is to be discouraged, and, as the correspondent of the *Maidenhead Advertiser* observes, a cyclist wheeling his bicycle in the wrong direction commits an offence just as if he was riding it. We know of other towns with the same kind of difficulty about busy main streets, and we are aware that most of the cyclists who offend do so in ignorance. The letter to which we have referred does not suggest that busy police should have to summon offenders and be taken off other duties to attend court, but rather that the cyclists should be told they are in fault and turned back in the right direction. With this we agree, and of course if warnings were unheeded it might then become necessary to resort to court proceedings. Once the position became realized very few offences of this kind would, we believe, be committed.

## Maintenance

Leave to appeal has been given in the case of *Martell and Others* v. *Consett Iron Co., Ltd.*, reported in *The Times* on October 23. It would therefore not be proper at this stage to say much about the issues of law, or anything about the merits as between the parties to the action. It is, however, legitimate for us to say that we think it would be a matter of regret on general grounds, if the decision of Mr. Justice Danckwerts were reversed upon appeal. In cases of the pollution of water supply and of rivers it is ordinarily a powerful corporation which is responsible for the pollution. All too frequently the culprits, where pollution is proved, are a large local authority, as in certain cases on which we commented not long ago, a local authority which is pouring sewage into water in which other persons have an interest. In the case we are now noticing as in a good many of the old cases to be found in *Lumley*, pollution is alleged to have been caused by an industrial concern : in the present case, that remains to be established for the matter arising before Danckwerts, J., was only preliminary to the trial proper. Typically, a local authority or big trading concern will be better able to assert its position in legal proceedings than will be a riparian property owner, or anybody else whose interests are adversely affected. It is therefore all to the good (in our opinion) that there should be anglers' associations and other bodies which by combining are prepared to espouse the cause of the small man, if necessary, in legal proceedings for an injunction. It might be better if the pollution of rivers and streams were checked invariably by a public authority, but experience for nearly 100 years shows that things do not happen in that way. We are not concerned here either to condemn or to excuse the local authorities who had powers under the Rivers Pollution Prevention Act, 1876, and did not use these powers, or the newly created river boards, which have enhanced powers under legislation of the last few years but have not up to the present been conspicuously successful in curing faults of many years standing. We receive year by year reports of river boards and similar authorities, and we pay tribute to the efforts they are making, to improve the condition of rivers which are often suffering from old standing pollution. But this is a slow process, and meantime the individual who is

affected, whether he has fishing rights or rights as a riparian proprietor, or it may be in some cases a right of taking water for a small water supply, is left to make the best fight he can against a powerful commercial or municipal interest. This case of *Martell and Others* v. *Consett Iron Co., Ltd.* was no doubt peculiar, in that the real plaintiff was an anglers' association, which obtained support from a larger body called the Anglers' Co-operative Society. Mrs. Martell, in whose name the proceedings were begun, was a riparian owner, but she only came in upon being fully indemnified for costs. To that extent, there was some plausibility in the suggestion of "maintenance," but it would be a pity if on appeal the old law of maintenance, which was devised for quite different purposes, prevented the giving of help to persons in that sort of unfortunate position.

## What is Lard ?

If an article of food demanded has some recognized standard of quality or composition it is an offence under the Food and Drugs Act, 1938, s. 3, to sell an article not coming up to that standard, and in the absence of a statutory standard the justices must fix one for themselves as a matter of fact, to be decided upon the evidence (*Bell's Sale of Food and Drugs*, 12th edn., p. 96) where cases are cited. A later case, cited in the supplement, is *Webb* v. *Jackson Wyness* [1948] 2 All E.R. 1054.

Nottinghamshire justices were recently invited to determine a standard for the sale of an article that could properly be sold as lard. The defendants were summoned in respect of a false description of an article which was labelled "English Refined Lard." The public analyst said it consisted in whole or part of animal fat which had been subjected to a hydrogenization process, which changed the physical and chemical properties of the fat and was usually used to convert soft or semi-soft fat into harder fat.

Mr. T. L. E. Gregory, chief inspector to the county council, said there was now no statutory standard for lard in this country, and referred to the cases which had decided that in such circumstances the magistrates must fix a standard for themselves on the evidence. The prosecution contended that the only substance to be called lard was the natural fat of the pig, rendered and allowed to set, and submitted that any fat which had been submitted to a chemical process, such as hydrogenization, which altered its physical and chemical appearance, was not lard and could not be called lard.

One of the defendants had said that an official of the Ministry of Food had told him that the article could be described as English lard, but as the office staff had been disbanded he could not trace the official. One defendant was fined and the other given an absolute discharge.

The newspaper report of the case does not say that there was any indication that the decision would be the subject of an appeal. If it should be, it will provide an interesting test case. From the report it appears that these proceedings must have been taken under the Merchandise Marks Act, though the statute is not mentioned.

A case under the Food and Drugs Act relating to the sale of a substance called lardine is *Rudd* v. *Skelton Co-operative Society, Ltd.* (1911) 75 J.P. 326.

## Bound Over

When magistrates order a person to enter into a recognizance to keep the peace and to be of good behaviour they may well wonder whether this is really going to prove effective unless they require a surety or sureties as well. If a friend becomes surety it is to his interest to do all in his power to see that the peace is preserved, and the man who is bound over as principal ought to feel under an obligation not to let down his friend. Without this there might be more temptation to risk the forfeiture of what is often a small sum and renew an old quarrel under some provocation. Without any statistics one can only go by impression and experience, but it is certainly true that one does not often hear of a case in which a person who has been bound over to keep the peace breaks out during the period of the recognizance. It is by no means unknown for a woman to tell the magistrates that a neighbour has been tantalizing her "just because she knows I am under the peace," or even for such a one to wait until the day following the expiry of the binding over and then resume hostilities. This kind of incident gives hope that men and women do take notice of the seriousness of entering into a recognizance, so that it is some measure of guarantee of temporary peace between hostile camps.

To be bound over at assizes is naturally regarded a serious matter, as it should be, and no defendant would be likely to treat this lightly. Recently a man having been fined by a judge for an assault on his wife, counsel for the Crown asked that the man might be bound over, as the police would feel that there would be more likelihood of peace in the town if that were done. The learned judge agreed to order this, and withdrew the fine, though of course he had power to fine and bind over if he thought fit. The fact that the police desired the binding over in a case in which a man and his wife were having trouble with one another, is evidence that they felt they could rely on its effectiveness.

## Disposal of Waste

The Free Miners of the Forest of Dean are to be congratulated on having defeated the proposal of the Atomic Energy Authority to dump waste from atomic plants into disused coal mines in the Forest. This proposal, which the experts of the Authority thought harmless, attracted opposition from other experts equally entitled to be heard, namely those who are concerned with underground water supplies. And it would be a pity, in any case, to override the objections of the Free Miners, and others connected with the Forest by long ties of history, even if there was no such danger to their persons as they feared, and even if any loss to their pecuniary interests would have been slight, because the mines had been almost worked out as the Authority contended. The episode affords a good illustration of the danger that some small body of persons, or some humble individual, will be overridden by a large authority. We do not deny that the waste from atomic plants must be got rid of somehow, just as the waste from coal mines and smelting works had to be got rid of a century ago. We might have said "just as town sewage and house refuse have to be got rid of today." We should, however, like to think that the country had passed beyond the stage when it was thought that all these different wastes could be advantageously dumped in the spot which is most convenient for the people who have to get rid of them, irrespectively of the feelings and even of the interests of the local people, who normally are comparatively humble folk. In the nineteenth century large areas were blasted by becoming pit mounds and slag heaps. Some of these have within the last few years been found to contain valuable ingredients, and have been cleared commercially. Others have been turned into public open spaces, and some have been levelled for building. Even so, a great deal still remains. New deposits of that kind, from mines or works or atomic plants, can be checked under the Town and Country Planning Act, 1947, but this may not prove effective unless local people, like the Free Miners, are alert to press objections. As we have said, the waste product must go somewhere, but that "somewhere" needs to be carefully explored.

# ADOPTION OF CHILDREN

## REPORT OF THE DEPARTMENTAL COMMITTEE

The Departmental Committee on the adoption of children was appointed by the Home Secretary and the Secretary of State for Scotland to consider the present law relating to the adoption of children and to report whether any and, if so, what changes in policy or procedure are desirable in the interests of the welfare of children. The chairman was Sir Gerald Hurst, Q.C., T.D. The report of the committee was published recently. It is emphasized at the outset that the selection of the right substitute home for any particular child is an individual matter which depends ultimately upon the judgment formed by individuals of the personalities and motives of the would-be adopters and of the personality, or frequently the potentialities, of the particular child. After a very useful exposition of the background of adoption law, general information is given as to the present position with the regard to the making of adoption orders which average about 14,000 annually. The investigations made by the committee showed that even the more recent provisions of adoption law do not always afford a sufficient protection to those concerned.

Part II of the report contains the main recommendations made by the committee. On the functions of local authorities it is stated that many of them regard their power to arrange adoptions as limited to children who are in their care under the Children Act. The committee recommend that local authorities should be specifically empowered to arrange, if they wish, for the adoption of any child for whom adoption is sought, without the necessity of receiving the child into care. The committee do not think it is right, however, that local authorities should allow their children's officers to make adoption arrangements without consultation with any committee and suggest that they should have some kind of case committee as is required for adoption societies. After reviewing the work of adoption societies special attention is given to third party and " direct placings." Turning to the minimum age at which a child should be placed for adoption, the committee found little disagreement with the view that it is preferable for a child not to be taken away from his mother before the age of six weeks. The committee did not think it practicable to prohibit the placing of a child for adoption before this age. But recommended that the probationary period should not begin until that age.

### LOCAL AUTHORITY PRACTICE

On the position of local authorities in adoption work, it is pointed out that they are required to supervise two categories of case :—

(*a*) Where a child is placed for legal or *de facto* adoption through the agency of a third party.

(*b*) Where notice of intention to apply for an adoption order is given.

The committee think that it is very important to differentiate between the local authority's functions as supervising authority and its functions as guardian, *ad litem*. There was considerable evidence that co-operation between the various departments of local authorities interested in child welfare is not as complete as it should be. When children are placed for adoption they are supervised by officers of the children's department but, it is rather extraordinary for the committee to have to say " the circumstances may be unknown to the Health Department or to the Education Department as the case may be." The committee urge local authorities to ensure that all appropriate departments are notified of children placed in their area and that there is full co-operation between them in the children's interests.

The committee were told that certain local authorities accept appointment as guardian, *ad litem*, after they have themselves participated in making the arrangements. This is contrary to the advice given by the Lord Chancellor and the Home Secretary, but some continue to do so at the wish of the courts. The committee recommend that legislation should make clear that where a local authority is responsible for placing a child no officer of that authority may act as guardian, *ad litem*. As to the policy of appointing the local authority in this capacity it has sometimes been found that officers of a local authority have failed to realize that their ultimate responsibility as guardian, *ad litem*, lies to the court and not to the local authority which employs them. The committee express the view that an individual member of the staff of the local authority should be so appointed.

### PROCEDURE

The procedure for the making of adoptions orders by the several courts is considered in detail and in particular the requirement that the court, before making an order, shall be satisfied " that the order if made will be for the welfare of the infant." It is emphasized that the responsibility for making or refusing an an order rests upon the court and that it is important that " no colour should be given to the impression that the court acts as a mere rubber stamp for giving effect to the views of the guardian, *ad litem*." As to attendance at court it is recommended that this should be required of the applicants and the child save in most exceptional circumstances.

On the matter of consents it is accepted as generally agreed that the consent of the child's mother is the most important of those which are required and the committee have some sympathy with those who have suggested that the court should be able to see the mother and satisfy itself by direct questioning that her consent is freely given. Nevertheless, the committee do not recommend a return to the provisions of the former rule which normally required her attendance, since much hardship and even distress, may be occasioned by bringing a mother what may be a considerable distance for this purpose, perhaps months or even years after she had given up her child. As to dispensing with consents it is pointed out that it was originally believed that the consent of a parent could be dispensed with only on the fairly narrow grounds that he had abandoned or deserted the infant, or could not be found, or was incapable of giving such consent. In the case of *Harris* v. *Hawkins*, however, the High Court decided that the court could dispense with any consent if, in the opinion of the court and in all the circumstances, the person was one whose consent should be dispensed with. The committee believe that it was expected that the new power in the Act of 1950 to dispense with consent on the ground that consent was unreasonably withheld, would tend to focus the attention of courts on the welfare of the child but two recent judgments

indicate that the wording selected was not apt for this purpose. The committee recommend, therefore, the removal from the statute of this provision and the addition of a further specific ground in terms which allow the court to dispense with the consent of a parent who in its opinion has made no attempt to discharge the responsibilities of a parent.

Many witnesses drew the attention of the committee to the fact that when an adoption order is refused there is nothing to prevent the child remaining in the adoptive home, unless the arrangement was made by an adoption society. The committee think that the most practical way to deal with this difficulty would be to give the court power, when refusing an order, to direct the local authority to bring the child before a juvenile court for consideration whether he is " in need of care or protection."

### MISCELLANEOUS

Among the miscellaneous matters dealt with in the report is the consideration which should be given to the health of the applicants and child. In the view of the committee there has been a tendency to pay far more attention to the health of the child than of the would-be adopters. It is considered that physical and mental perfection, if it could be guaranteed, is not essential to qualify a child for adoption, and that children who may not attain this high standard are yet suitable provided the applicants are aware of and are ready to accept, the defects. The committee are of opinion, however, that insufficient attention seems to have been paid to the consideration that it is not in the interests of a child to be adopted by applicants whose prospects of good health and normal length of life are in doubt. The committee think it right that the court should have proper advice about the state of the applicant's health and recommend that all applicants for an adoption order other than the father or mother of the child should be required to undergo a medical examination.

As to the age of applicants the attention of the committee was drawn to the extremely widespread granting of adoption orders in favour of grandparents, notwithstanding Mr. Justice Vaisey's observations in *Re D.X.* (*an infant*) on the need for caution in such cases. In circumstances where grandparents bring up and desire to adopt a legitimate child both of whose parents are dead, the committee think that they would do well to consider the alternative possibility of being appointed guardians of the child without disturbing the national relationship. The committee considered the existing provisions relating to the difference between the ages of adopters and of an adopted child, and are of opinion that it can be left to courts not to grant orders in cases where the relative ages of the persons would make this unsuitable but that courts should discourage adoption by those who are hardly likely to be mature enough to assume the responsibilities of adoptive parents.

The recommendation in the report which received the greatest publicity in the daily press was about telling an adopted child that he is adopted. The committee recommend that there should be an entry on the form of application for an order showing that either the child has already been told or that this will be done. Part III includes various miscellaneous recommendations as to applicants moving to another area ; removal of child by a parent while adoption is pending ; adjudication by members of a local authority, which is deprecated, and records of adoption.

# CLIENTS

*By* PAUL T. W. BUTTERS

The *Law List* contains a reasonable quota of solicitors named Holmes and it is more than an even chance that at least one of them has a clerk named Watson. Indeed, it is not beyond the bounds of possibility that one of these solicitors, hearing footsteps on his office stairs, might be guilty of unconscious plagiarism in addressing his clerk in these historic words : " And here, if I mistake not, Watson, is our client now." He is, however, unlikely to go on to explain to a bewildered underling that the client (whom he is meeting for the first time) is obviously a retired, left-handed haberdasher with a wife and three children living in comfortable circumstances in Stoke-on-Trent, two hammer toes and a golf handicap of seven. Furthermore, unless he is a very exceptional solicitor indeed, his name and that of his clerk are likely to be the only things he has in common with the late Mr. Sherlock Holmes, and the clients he gets will differ considerably from those who crossed the threshold of 221b Baker Street with such regularity. There will, for instance, be a noticeable shortage of beautiful, starry-eyed women seeking his advice and assistance before draping themselves across his desk in a becoming swoon ; if, like the other and more famous Holmes, he is ever consulted by a Man with a Twisted Lip or a Yellow Face he will almost certainly find that his unfortunate client's disfigurement has no more sinister background than a visit to a careless dentist or an attack of jaundice ; while Black Peter (if he ever puts in an appearance at all, which is unlikely) will be a coal merchant seeking his remedy in the county court against a customer who has neglected the formality of paying his bill.

The young solicitor, on the threshold of his career and in the first flush of fat-headed youth, should not expect too much of his clients or he will be grievously disappointed with the daily routine of a practising lawyer. But if he is of a mercenary, as opposed to a chivalrous or adventurous turn of mind (as he certainly will be after he has been practising a few years) he will find some consolation in the fact that a reasonably substantial conveyance of property will be more lucrative and make less demands on the nerve centres than the defence of the bloodiest murderer who ever drove a knife up to the hilt between the shoulder blades of his unsuspecting victim—and whom he will probably be instructed to defend under the Poor Prisoners Defence Act anyway.

To attempt to classify the clients an average practising solicitor is likely to meet in the course of his career is, of course, utterly impossible. Only the extreme types like The Ideal Client, The Exasperating Client and The Client Who Invites Murder can be drawn with any sort of accuracy.

The Ideal Client is the one who instructs you to convey his country mansion to a friend of his for £20,000, and mentions casually that his friend wants you to act for him as well. He is careful to explain that they fully appreciate that the only advantage they will derive from this admirable arrangement is the fact that the work will be done more efficiently and expeditiously than would otherwise be the case and will naturally involve no reduction in fees. Incidentally, his friend (who, come to think of it, is an Ideal Client himself) would be obliged if you would be good enough to negotiate a £15,000 mortgage for him. He then produces his title deeds which disclose that he bought the property thirty years ago, there have been no dealings with it since and you will be hard put to it to make your Abstract

of Title run to a dozen lines. When you have carried through the transaction with the efficiency and expedition your clients expected, you deliver, with some diffidence, a bill which would go a long way towards balancing the National Debt, but instead of paling beneath their respective tans the Ideal Client and his equally Ideal Friend sign their respective cheques with a firm hand and mention, *en passant*, how reasonable your charges are.

It is hardly necessary to add that if you get one Ideal Client (with or without a friend) in the course of a long (and naturally distinguished) career, you will be doing very well.

Unhappily, the Exasperating Client is more frequently met with. He (or more usually, she) is the central figure in a matrimonial case. If your client is the husband, you allow an hour per interview ; if the wife, you should be more generous and allow three. That is always assuming you have not yet acquired the technique (which requires years of practice) of steering your client gently but firmly to the door when he (or she) has told you everything worth listening to (which usually isn't very much). After some half a dozen attendances you will have taken instructions of the length of an average novel ; followed this by three adjourned hearings before the magistrates ; and finally, with the assistance of a probation officer who has worked almost as hard as you have yourself, you manage to effect a reconciliation, domestic peace is restored and the wife returns to the husband and an occasional black-eye.

You then send a bill for £5 5*s*. instead of the £100 you have undoubtedly earned, and eventually settle for £3 3*s*. if you are lucky.

The Clients who Invite Murder (their own) can be listed under two main heads. The first is the one who comes to your office, ostensibly to seek your advice, but whose object from the first is obviously to advise *you*. He knows all there is to know about everybody else's job as well as his own. He has read *Everyman's Own Lawyer* with indifferent success ; written to the legal correspondent of a weekly newspaper and is harshly critical of the result ; and finally completes an impressive performance by telling you that he has an uncle in the north who, as well as being a fishmonger in a substantial way of business (which appears to your simple mind to verge on the irrelevant) is also a magistrate of many years' experience and obviously much better equipped to advise than a well-meaning but obviously incompetent lawyer who has spent the best years of his life trying to understand a subject which Uncle has mastered completely in his spare time. This irritating nephew then gives you his own views to which he obviously attaches even more importance than those of the avuncular oracle. Then, almost as an afterthought, he asks for yours, is obviously not a bit impressed by them, shakes you limply by the hand and retires, swathed in a massive self-conceit, leaving his legal adviser seething impotently in his chair.

The other type of Client Who Invites Murder is the one who consults you in his claim for damages for the loss of his little finger and produces a newspaper-cutting of another case where the injured party recovered an astronomical sum and which he assures you, with his hand on his heart, is exactly similar to his own in every particular. If you explain to this well-meaning son of the people that a bricklayer's labourer is not likely to be awarded quite so much for the loss of a finger as a concert pianist of international reputation, he will look at you in open disbelief and is soon hinting darkly that you are obviously in the pay of the insurance company. After all, he says (and to his credit he usually believes it) a little finger is still a little finger whether it happens to sprout out of his own hand or that of a chap with an unpronounceable name who plays the piano rather well. Completely satisfied with the logic of his own argument, this unhappy man, when (if ever) he does settle his claim for a reasonable sum, remains convinced that he has been swindled, not only by the insurance company, but by his legal adviser as well.

Clients such as this are the exception rather than the rule ; were it otherwise, most solicitors would end their careers at an alarmingly early age, if not actually in the cold confines of the grave itself, at least within the walls of a mental home. And if the reader complains, with some reason, that we have spent a great deal of time and used an equivalent amount of space on a tiny minority, our only excuse is that the unusual and bizarre is always easier to write about than the ordinary. And yet, to label any client as " ordinary " would be doing him less than justice. Sandwiched between the few eccentrics we have been considering, you get the mass of clients bringing you their own particular problems, seeking a way out of their own immediate difficulties—and if those problems and difficulties sometimes seem to you to be trifling, to them they are of the first importance. And the fact remains that, whoever the client may be and whatever the problem he poses, if you are a man of intelligence and imagination (which, of course, you are, being a lawyer) you will find them of absorbing interest. And the reason is as simple as it could possibly be. It lies in the fact that nothing can be quite so interesting as people, and the average lawyer, during his working life, will meet every conceivable type it is possible to imagine and see reflected every facet of human nature. The Liar, the Truthful, the Humorous, the Awkward, the Cunning, the Nervous, the Intelligent, the Stupid ; sooner or later they all find their way into the Client's chair in an endless pageant of human emotions, fascinating in its variety and not a little terrifying.

A practising lawyer spends much of his time solving other people's problems and resolving their difficulties ; and it should be conceded that he generally makes a better job of it than he is given credit for. Some are major problems, some are very minor indeed—but the wise practitioner realizes that, to the client, his own particular problem, large or small, is very important indeed. The question as to who is entitled to the £50 grandma left in the Post Office now that she has died intestate, is just as important to Mrs. Brown (who doesn't know what " intestate " means anyway) as is the construction of a clause in the long and beautifully ambiguous £50,000 will of his uncle to the potentially opulent Mr. Smith. Mr. Robinson, on the other hand, faces a different problem. He has a wife and three children (with a fourth expected) and he wants to know whether his landlord really *can* turn him out because he has got a bit behind with his rent, or whether he is still protected by the Rent Acts. The answer to this acute problem is more vital to him than the decision Mr. Jones has to make as to whether four or five thousand is a reasonable price for the little place in the country which he is thinking of buying for his family.

Yes, clients are a fascinating and, on the whole, a likeable lot and it would be interesting to speculate on what they, in their turn, think of their lawyers. Or, perhaps, on consideration, it might be wiser not to inquire. One thing is certain. If, on one of our bad mornings, we are apt to find them and their problems a little tiresome, we should reflect on this. An actor (with whom a lawyer has quite a lot in common) can on occasion be as critical of his audience as they are of him—and often with less justification. By the same token, a lawyer may be critical of his clients. But they would both do well to remember that without an audience (who, after all, do pay for admission unless they happen to be dramatic critics) or a client (who also pays sometimes) they would both be out of a job.

And so, with that pregnant thought, let us leave them.

# LOCAL GOVERNMENT SALARIES REVIEW

[CONTRIBUTED]

An article in the *Justice of the Peace and Local Government Review* on July 17 examined the difficulties facing local authorities in recruiting and retaining adequate and competent staff. These difficulties stemmed, in the view of the writer, from inadequate salary standards.

In an attempt to overcome these difficulties agreement was reached in August between the two sides of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services on a new set of salary scales and a new grading structure to replace, from the beginning of 1955, those which came into being in 1946. The characteristics of the new scheme can best be studied by reference to the defects which had become manifest in its predecessor and these, in turn, can be measured by the extent to which the national salary scheme had, as a result of changing economic circumstances, come to depart from the ideals in the minds of the National Joint Council in 1946.

The scales were fixed, said the introduction to that scheme, "after considering existing scales in comparable occupations and after reviewing changes in remuneration generally . . . local government should not take the lead in determining standards, but should be in the 'first flight of good employers'."

If those were the broad objects of the National Joint Council eight years ago, nothing has happened since to make them change their attitude. The principle underlying their pronouncement of 1946, they now assert, is as essential to the wellbeing of local government as it was then: to secure the right type of recruit there must be financial rewards which are adequate in present circumstances. Moreover, local authorities must be able not only to recruit the right type of juniors but also able to retain experienced and qualified officers at higher levels.

Neither of these conditions is at present fulfilled. Authorities in all parts of the country have been reporting their inability to attract and keep the staff they need. The educational standards of admission have remained lower than those advocated by the National Joint Council and the constituent authorities; the outflow of qualified staff has been a widespread cause of embarrassment. More than one major authority has adopted terms of employment which, though nominally within the framework of the national scheme, were in fact more generous, and a range of smaller deviations from (or at least elastic interpretations of) that scheme have been resorted to. Pressure for a substantial modification, designed to make the service more attractive, has fallen on the National Joint Council alike from employing authorities and from the staff.

Local government, like other forms of public employment, can no longer offer, in compensation for modest rates of pay, alternative baits such as greater security of tenure or pensions or shorter hours of work: these are now common in most forms of employment. Competition with outside employers therefore now demands equivalent pay standards; moreover, since by and large local authorities need a higher level of educational attainment than most private undertakings, they must add something in order to attract candidates with this extra qualification. How far do the new scales and gradings go towards attaining these objects?

The new agreement has three main features. In the first place it splits the general division (the lowest or entry grade) into two—one for those who have and the other for those who have not attained the educational level measured by success in the Local Government Examinations Board entrance examination or some equivalent. To this feature further reference will be made later.

The next innovation is a speeding-up of the rate of advancement at many points, including the general division itself in which the maximum of £475 will be reached at 28 years of age instead of 30. (The maximum for the lower section has been fixed at £400 a year.)

The third feature relates to the administrative, professional, and technical grades which have hitherto numbered 11 and will in future be only seven. Within those grades, moreover, there are to be larger increments than in the past.

It is manifest that authorities are going to pay more in the aggregate for the services they need: this was inevitable if the objects of the revision were to be achieved. Whether the increases are sufficient and whether they are applied at the most suitable strategic points is more difficult to judge, and indeed the quality of the new pudding can hardly be judged save by the familiar device of eating it; the success of the new measures will only be known after a period of trial, but some of their likely advantages and drawbacks can be foreseen.

There are two principal objections which the existing staff will level at the agreement. The improvements are unequal as between grades, and these inequalities do not seem to conform to any clear and defensible principle. That the improvements should be greater as they move up the scales would be proper enough as a means of correcting the trend over recent years towards reducing the "differentials" between the earnings of higher and lower grades; this correction will do something to re-establish the incentives to experienced staff to remain in the service and accept higher responsibilities. But it may be doubted whether this process has gone far enough, especially in the middle ranges; the increases seem at some points capricious, affording greater relief to some grades than others, with no apparent justification. To those who receive the less generous increases this will remain an inevitable source of complaint.

Yet the new scales deserve to be judged not only piecemeal and as they affect existing office-holders, but as a whole and as a means of creating a more logical and more attractive structure for newcomers. They are not intended merely as a way of improving immediate prospects for those now in the service; the rectification of present anomalies cannot but produce some others. For instance, the merging of two A.P.T. grades into one must mean that the occupants of the lower grade fare better than those in the upper. Judged from the long-term view, however, the scheme certainly represents a move in the right direction, though whether it has gone far enough, it must be emphasized again, can be finally judged only in the light of experience.

Two points remain for comment. The splitting of the general division into two classes—the qualified and the unqualified—introduces a new principle. Are they to be employed indifferently on the same class of duties or are the goats to be given simpler tasks than the sheep? If they are to be interchangeable, all experience shows that grave discontent will arise when staff are paid at different rates for equal responsibilities. If, on the other hand, their functions are to be differentiated then the much-desired reduction in the number of strata in the service is to that extent being counterbalanced. The intention is not clear, and the reactions of individual authorities may differ.

Finally, important though a wisely graded and properly paid subordinate staff is to the senior officers who carry responsibility for planning and supervising the service, these in their turn have their economic problems which are indirectly intensified by these changes. The new grading scheme, for instance, has a grade X with a maximum salary of £1,100; some chief officers have a maximum no higher than £1,050 and an application for a consequential adjustment for these and more highly-paid staff through the Joint Negotiating Committee for Chief Officers seems an inevitable next step.

# LOCAL AUTHORITIES AND THE HOUSING REPAIRS AND RENTS ACT, 1954

*By* "ESSEX"

## PART II. RENT INCREASES—CIRCULAR 53/54

Last month, those provisions of the Housing Repairs and Rents Act, 1954, were discussed which give powers to local authorities to patch up condemned houses, and keep them in occupation so long as they are of a standard adequate for the time being. It was pointed out that this principle of conservation during improvement was a radical change from the corresponding principle in the Act of 1936, which was to demolish within six weeks of the effective decision to condemn.

It will be recalled that the Act is being dealt with under the three aspects with which local authorities are mainly concerned namely, the medical officer of health's—slum clearance, the town clerk's—advice to landlords and tenants on their rent increases, and the chief sanitary inspector's—inspection of the state of repair of houses to see if the repair increases should continue to be paid. Finally, it was pointed out that there were, in the Act, unrelated miscellaneous matters of far reaching effect, some of which are connected with local authorities and must, therefore, be dealt with. Emphasis was placed on the need to study the whole of the Act, not least because some of the miscellaneous matters not to be mentioned in this survey are quite revolutionary, and a general knowledge of the law will be incorrect if the changes are not noted.

### THE TOWN CLERK—ADVICE ON RENT INCREASES

The town clerk, or the member of his staff responsible, has the invidious task of drawing the line between explaining the Act so that its provisions are understood and encroaching on the field of the local solicitor in private practice, for example by actually drawing up a form of notice.

It will first be necessary to explain that the Act has not provided for an all round increase such as the 15 *per cent.* granted after the 1914-18 war. Increases will only be available for houses let before September 1, 1939, which are fit for human habitation, in good repair, whose landlords have recently spent a certain amount of money on them, and the rents of which are not already high enough. Next, no increase is payable until at least six weeks after the proper notice is served. (This is important—some landlords are asking, and some tenants paying, an immediate increase in ignorance of the real facts.) Repair increases do not apply to

(*a*) Dwellings first let after September 1, 1939 (because the rent tribunal can fix a reasonable rent, especially as they now have power to raise as well as lower the standard rent).

(*b*) Dwellings improved with the assistance of a grant under the Housing Act, 1949, so that the local authority have fixed a rent.

(*c*) Dwellings sold by a local authority with a restriction on the rent, under the Housing Act, 1952.

(*d*) Dwellings sold by a local authority or a housing association, with a restriction on the rent under s. 34 of the Act of 1954.

### CAN THE RENT OF THIS HOUSE BE INCREASED?

This then, is the first question to be answered, and to do so the five questions listed above must be posed. The most convenient order is as follows. Clear first of all the easy problem of the house's being let before September, 1939, or excluded for one of the reasons (*b*), (*c*) or (*d*) above. Next, see that the "rent" (*see* below) is not up to the limit already. This limit is twice the gross value of the dwelling. Check any figure given by the inquirer, as he may be quoting the rateable value, which is much more familiar to him. A table giving the annual equivalents of weekly rent figures can usefully be made or bought.

For the third stage, make a perfunctory inquiry about the state of repair. If the inquirer is a landlord the answer will be "good"—if he is a tenant, it will be "poor." The answer to each is more or less the same: the notice of increase must be served, or awaited, and then an application to the sanitary inspector for a certificate of disrepair must be awaited or made. Except, of course, for the right of appeal to the county court, his decision on the point is the only one that is of any value.

A more definite answer can be given to the landlord's expenditure test. Within 12 consecutive months out of the last 14, he must have spent on repairs (not improvements, etc., *see* s. 49 (1)) at least three times the statutory repairs deduction for the dwelling. This figure can be obtained from tables, as it is related to the gross value. If, before December 1, 1954, the landlord finds that his last expenditure was too far back he has, just this once, the alternative of showing that, in three consecutive years out of the last four, he has spent six times the statutory repairs deduction.

### HOW MUCH MAY THE RENT BE INCREASED?

The increase may be twice the statutory repairs deduction provided that this does not make the rent—which here, and above, means the rent less any payments for furniture, for services, for rates, and less any improvements' increase (even for work carried out as far back as 1914)—more than twice the gross value, when it will be as much as will make it twice the gross value. This is assuming that the landlord is responsible for all the repairs. The Act treats him, for its own purposes, as being responsible for all that the tenant is not bound to by his agreement. If, on this basis, the landlord is responsible for no repairs he gets no increase. If the tenant is responsible for some repairs the permitted increase will only be a corresponding fraction of the normal "twice" increase. If the tenant is not bound to any, but neither is the landlord bound to do internal decoration, the landlord may choose not to be bound to do it, and he may then, after serving notice of his election, increase the rent by one and one-third, instead of twice, the statutory repairs deduction. There is a particular advantage to the landlord who cannot quite satisfy the expenditure test, for the latter is

likewise reduced by the same amount—one-third—and he may choose not to do internal decoration just to reduce his qualifying figure and get some increase rather than none. It must be noticed, by the way, that the landlord's right to elect ceases once he has served a notice of election, or even a notice of increase.

### HOW IS THE RENT TO BE INCREASED ?

There is one way, and one way only, in which the rent may be increased. The landlord must serve a notice, six weeks beforehand, following the prescribed wording and putting in the prescribed explanations. These are of such a length that the use of a printed form from a stationer is almost essential. The same applies to a declaration which the landlord has to complete, and send with the notice, showing exactly how he has satisfied the landlord's expenditure test and stating that the conditions justify the increase in rent, *i.e.*, that the house is in good repair and reasonably fit for human habitation in the prescribed matters.

The notice, it appears, is not a notice to quit, like the Rent Acts' notices of increase, but if the prescribed form, for the notice or for the declaration, is not followed, *e.g.*, if the tenant is just given notice by letter, all he need (or can) do is to ignore it and continue to pay the lower rent. If the landlord tries to take him to court he will then learn his errors. If the tenant either believes the declaration to be at fault in that the figures do not justify an increase, or does not believe the work to have been done, or some of the work was his own responsibility, then the tenant must take the landlord to the county court, within 28 days. If he does not do this, the declaration cannot be challenged at all—even if the landlord has to take the tenant to court ; unchallenged errors in the declaration are no defence to an action for a withheld increase of rent.

Where the tenant disagrees with the statement in the declaration that the house is in good repair and reasonably fit for human habitation in the statutory points, he must apply to the chief sanitary inspector of his borough or district for a certificate of disrepair. This matter is further dealt with later.

### THE TOWN CLERK—IMPROVEMENT GRANTS

The sections of the Act dealing with this matter (ss. 16 and 37) take the form of amendments of the Housing Act, 1949, and, while local government officials who have learnt the old provisions will need to note the changes, the intending improver, in the main, will only wish to be told the present position, as shortly and concisely as possible. And, indeed, the changes are so complex that officials who have studied them may also feel the need to start again at the beginning and be told what the final form really is.

The inquirer, calling at the town clerk's department will, then, be given the following information, if he is an owner-freeholder, or the holder of a lease, with, still unexpired, usually 30 years, although some figure between 15 and 30 years is acceptable if that, in the opinion of the local authority, represents the maximum period for which the house will provide "satisfactory accommodation." If he is a tenant there can be no grant for him : he must persuade his landlord to move in the matter.

It will be found that, in many cases, the interview can be materially shortened if the inquirer's qualifications are checked stage by stage.

The work should not have been begun, before the application is approved—an H.M. Stationery Office leaflet says it " may " prejudice it.

The work must be for conversions or improvements and not repairs, although the cost of repairs may be borrowed if the authority agree. Indeed, if the house is not in good repair, it must be made so before the grant can be paid, although not before it can be approved.

The work of improvement must be going to cost at least £100 and the grant is half the cost, up to a limit, save in special circumstances involving individual application to the Ministry, of a grant of £400. " Cost " includes architect's and quantity surveyor's fees, and is no longer limited to £800.

The house or flats should after conversion be likely to provide satisfactory accommodation for 30 years, although if " it is expedient in all the circumstances that the proposals or application should be approved " a period between 15 and 30 years may be acceptable.

Reduced requirements for the standard of fitness to which the improvement plans (and associated repair works unassisted save by loan) must be going to bring the house are to be found in para. 11 of circular 36/54. There is not space to set them out here, but they are more detailed than the requirements of " fitness for human habitation." Reference must still be made to appendix III to circular 90/49 (as modified by circular 36/54) and to the Practice Notes appended to circular 4/51 for guidance as to what works can be grant aided and what can not.

Having ascertained that nothing in the applicant's title, proposals, or house disentitles him to a grant, the next step is to see whether he is willing to accept the conditions to which the house will become subject on the grant being made. This burden remains with the house for 20 years unless the authority exercise their new power of fixing a shorter period, in cases where they are of the opinion that the house will not provide satisfactory accommodation for over 20 years. (Even if they have that opinion, it appears that they are not bound to exercise the power.)

The first condition is that the house must be used solely as a private dwelling house—save with, and to the extent of, the consent of the authority—and must be occupied by the applicant, or his family, or the person succeeding to the house on his death (not a purchaser), or else let, or kept available for letting at a controlled rent. It will be observed that there is no provision permitting the sale of the house subject to the conditions. If the house is to be sold it is necessary first to buy out the conditions by repaying a proportionate part of the grant, according to the number of years the conditions still have to run, with compound interest.

The rent at which the property is to be let is controlled by ss. 22 and 23 (1) (*c*) of the Housing Act, 1949, as amended by ss. 16 (6) and (8) and 37 of the Act of 1954. The detail is complicated to the extreme, but the principle is simply this—that it should be a figure that " fairly represents the value of the house today." (Quoting from the leaflet which the Stationery Office have published for the guidance of the public.) In " most cases " (again according to that same leaflet) the local authority will fix the rent (and Ministry of Housing and Local Government circular 55/54 expresses the hope that the council will authorize their officers to tell applicants not only whether a grant is likely to be made but also what rent is likely to be fixed, on receipt of outline proposals and before the applicants are put to the expense of providing plans and specifications). A local authority in fixing the rent are expressly bound to have regard to the age of the building, to the character and condition of the dwelling after the carrying out of the proposed improvement works, and to the cost of those works. If the rent is already a " reasonable rent " fixed by a rent tribunal, however, it will be outside the control of the local authority, being found by adding eight *per cent.* of the owner's (unassisted) share of the cost of the works.

There are two further conditions to be observed : all reasonable steps shall be taken to maintain the dwelling in all respects fit for human habitation, and no premium must be taken.

If there is ever a breach of the conditions the county court can be asked either to order the owner to buy himself out (price calculated as above) or to prohibit the breach.

As far as the local authority is concerned, administratively, the conditions have to be registered as a local land charge, but the question of excess rents need no longer concern them unduly, because the new rent is now made the standard rent and the machinery of the Rent Acts is available to enable the tenant himself to watch what he is charged, provided, of course, the letting is a controlled one. In fact, the old condition that the house must be let at the maximum rent is now deemed to be complied with so long as the house is let on a controlled letting.

The local authority may now make the grant without reference to the Ministry, but they still need to approach the Ministry to waive any of the preliminary qualifications in an appropriate case, and in fact are encouraged to do so.

Grants are given for conversions, producing new accommodation, as well as for improvements, and it is as well for the applicant for such a grant to have it emphasized that only so long as he does not have a grant will the new self-contained premises produced be free of rent control. Similarly the rent of dwellings improved with the assistance of a grant cannot be the subject of a repairs increase.

### THE CHIEF SANITARY INSPECTOR—CERTIFICATES OF DISREPAIR

The chief sanitary inspector can expect a good deal of work from the Act, both now and in the future. Tenants will come to him complaining that the condition of their house or flat either does not justify the repairs increase for which the landlord has given notice, or has so deteriorated that its continued payment is no longer equitable. These are applications for a certificate of disrepair before the consideration of which the local authority can charge a sum up to 1*s*., as they can if the landlord follows up the issue of the certificate with an application for its revocation after he has done the work required to rectify the situation.

On receipt of an application for a certificate of disrepair the house must be inspected. A certificate will then be issued if either the house " is not in good repair," or, alternatively or in addition, " is not reasonably suitable " for occupation having regard to the matters other than repair which s. 9 of the Act uses to lay down a standard of fitness for human habitation. These are (*a*) repair, (*b*) stability, (*c*) freedom from damp, (*d*) natural lighting, (*e*) ventilation, (*f*) water supply, (*g*) drainage and sanitary conveniences, and (*h*) facilities for storage, preparation and cooking of food and for the disposal of waste water.

The certificate must be in the prescribed form which arranges for the defects to be specified, and takes effect from the date of the tenant's application. Pending its issue, therefore, the tenant must continue to pay the repairs increase, but afterwards he can deduct the over-payments and the 1*s*. fee paid on his application, from his rent. He must, however, not fail to serve the landlord with a copy of the certificate.

*(To be concluded)*

# A DIAMOND JUBILEE

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This year, 1954, sees the sixtieth anniversary of local government administration in the form we know it today, and jubilee celebrations are well under way as regards the rural district and parish councils which came into existence on March 5, 1894, the date of the Royal Assent to the Local Government Act, 1894. The urban district councils, however, are deferring their celebrations, because their elevation from the rank of urban sanitary authorities to their present status did not take place till 1895.

At the suggestion of the Rural District Councils Association, many rural authorities will be recognizing this important occasion in one way or another by—application for a grant of arms and/or adoption of a chairman's badge of office ; the inscription of the names of past chairmen of the council on display in the council chamber ; a photograph of the council members ; a special chair or inscribed gavel ; a luncheon, garden party, or dinner at which neighbouring authorities will be represented. The association, for its part, is applying for a grant of arms and adopting its chairman's badge of office, presented by its secretary, Mr. J. J. McIntyre, O.B.E., and it published in June a diamond jubilee number of *Rural District Review* containing a wealth of background of rural local government administration. The annual dinner of the association comprising a fully representative gathering has been named the " Diamond Jubilee Dinner." Certainly, the atmosphere of the annual conference of the association at Llandudno in June reflected the quiet satisfaction of rural district councils at a job well done and an eagerness to press on to bigger and better achievements.

The National Association of Parish Councils has just held a jubilee conference in London to mark the occasion which, as they say, represents the sixtieth year after " the separation of the Church and the State " in the parish. All in local government are pleased to see the re-birth and co-ordination of parish councils under the wing of the National Association, which has done so much to raise the level of parish administration, to secure for it public and Government recognition as an integral part of our local government system. So successful has been their work that even the Association of Municipal Corporations in their latest announcement of policy on local government reorganization express their belief in the value of retaining parish councils, whatever form of local government is ultimately adopted.

The Urban District Councils Association has decided that the diamond jubilee be commemorated in 1955, because the change of title to " urban district councils " did not take effect till January 1, 1895. Arrangements are proceeding for the acquisition of a badge of office to be worn by the chairman of the association's executive council and, no doubt, in due course, the association and its member councils will announce their further plans for celebrating the event.

It would be beyond the scope of this article to go into the vexed question of loss of functions during the past 60 years, or to review the failures and achievements of English local government in that period. The current topic of reorganization of local government has brought forth, in itself, many statements of the effect and extent of transfer of functions (particularly in the post-war era) with which we are all too familiar.

A contemporary journal, in speaking of the " Double Diamond " created by the fact that urbans and rurals are not acknowledging the same date for their jubilee aptly remarked—" . . . the celebration we would wish them lies outside their control —that 1955 should see the passing of another Local Government Act to lay the foundations for another 60 years of useful work."

Meanwhile, let the celebrations proceed with fervour, for they will provide a new and powerful impetus in the field of public relations, towards bringing home to the local electors an awareness that the form of local government of which they have become so accustomed has been serving the community for 60 long and useful years. There may thus result a greater realization of the thanks that are due to the public spirited men and women who have weathered the rigours of local electioneering and/or devoted numberless leisure hours in the interests of their fellow men.

This is the time to fire the imagination of the public. The opportunity must not be lost of acquainting them (so much more effectively while the glow of celebrations lasts) with the issues at stake in the impending reorganization of local government. At this turning point, nothing could be more valuable than well-informed public opinion.

# MISCELLANEOUS INFORMATION

## AMENDMENT OF THE MILK AND DAIRIES REGULATIONS, 1949 AND 1953, AND THE MILK (SPECIAL DESIGNATION) (RAW MILK) REGULATIONS, 1949 AND 1950

A joint announcement by the Ministry of Health, the Ministry of Agriculture and Fisheries and the Ministry of Food is as follows :

The Minister of Health, the Minister of Agriculture and Fisheries and the Minister of Food, after having consulted the organizations representing the interests concerned, have made the Milk and Dairies (Amendment) Regulations, 1954, and the Milk (Special Designation) (Raw Milk) (Amendment) Regulations, 1954, for the purposes set out below. The Amending Regulations came into force on September 30, 1954.

### Milk and Dairies Regulations

These regulations require a milk distributor to be registered by each local authority in whose area he sells milk. The Milk Marketing Board, having resumed their marketing powers, buy producers' milk and sell it under contract to distributors and manufacturers. Just before the milk passes to the buyer it is deemed by contract to have been in the momentary possession of the Board. The Board are, therefore, technically purveyors of the milk and as such would need to register as distributors with some 1,400 local authorities. This multiple registration is considered inappropriate, and the Amending Regulations exempt the Milk Marketing Board from the need to register as distributors, except where the Board are trading at or from premises where milk is handled by them.

### Raw Milk Regulations

The Milk (Special Designation) (Raw Milk) Regulations require a dealer in Tuberculin Tested milk to hold a licence from the local authority. To cover the milk which the Board buy from producers as Tuberculin Tested, the regulations have been amended to empower the Minister of Food to license the Board so that they, under contract, may resell the milk as Tuberculin Tested Milk to distributors and manufacturerers. Such licence will not cover milk which is handled at or from the Board's own premises.

These regulations have also been amended to avoid hardship to those T.T. licence holders whose herds are in process of becoming attested, but which will not reach that status before the expiry of the current T.T. licence. Such producers may apply for renewal of the T.T. licence for a limited period of six months. In addition, the opportunity has been taken to provide for the renewal or granting of T.T. licences to producers owning non-attested herds (which are, however, of attested standard) in those parts of the country which have been, or will in future be, declared to be Attested Areas or Eradication Areas under the Tuberculosis (Attested Herds) Scheme, 1950.

## FINANCES OF THE CITY AND COUNTY OF BRISTOL

Bristol is one of the 27 county boroughs which receive no equalization grant. City Treasurer Mr. T. R. Johnson, F.I.M.T.A., F.S.A.A., refers to this fact in the foreword to the accounts of the corporation for the year 1953/54 and mentions the two reports of the 27 to the Minister of Housing and Local Government. Those documents, although admittedly partisan, argued the case cogently for the grantless and although the Ministerial White Paper has now dashed hopes of any immediate revision we feel sure that the reports will receive very serious consideration from those in Whitehall responsible at a later date for reviewing the existing grant system.

In the absence of any equalization grant only 46 *per cent.* of the net cost of corporation services is provided by government revenues ; the remaining 56 *per cent.* falling upon the rates necessitated a levy of 21*s.* 6*d.*, which cost the ratepayer living in the house of average rateable value (£19) 7*s.* 10*d.* a week.

There are 120,000 rating assessments of houses and flats : the corporation own 31,000 dwellings. The charge on the rates for this vast housing undertaking is limited to 8·6*d.*, there being no rate contribution beyond the statutory minimum. The Housing Revenue Account showed at the year end a surplus of £33,000. During the year a revised scheme of rents was adopted consisting of :

(*a*) Flat rate increases ranging from 1*s.* 0*d.* to 3*s.* 0*d.* per week.
(*b*) A charge of 3*s.* 0*d.* per week for sub-tenants and 2*s.* 6*d.* per week for lodgers.
(*c*) Higher rent payments by tenants in receipt of gross weekly incomes exceeding £9.

The effect of these revisions is shown in the following examples of rents paid :

| *Number of Bedrooms* | *Range of Weekly Rents* | | | |
|---|---|---|---|---|
| | *Pre-War* | | *Post-War* | |
| | *From* | *To* | *From* | *To* |
| 2 | 9*s.* 0*d.* | 15*s.* 0*d.* | 17*s.* 0*d.* | 29*s.* 5*d.* |
| 3 | 11*s.* 0*d.* | 18*s.* 0*d.* | 17*s.* 6*d.* | 42*s.* 7*d.* |
| 4 | 14*s.* 6*d.* | 17*s.* 6*d.* | 17*s.* 6*d.* | 46*s.* 7*d.* |

From April 1953, with the exception of painting essential to the structure of the property, all internal decoration was made the responsibility of the tenant. As a result the average cost of repairs fell from £11 8*s.* 0*d.* in 1952/53 to £9 6*s.* 0*d.* in 1953/54.

An unusual part of the Abstract is that section giving the accounts of the Port of Bristol Authority. Results for the year were satisfactory, a surplus of £219,000 being realized. The greater part of this sum was transferred to the Dock Renewal Fund which at the end of the year stood at £315,000.

We notice that at the close of the year Bristol, in common with a number of other authorities, had part of its superannuation fund invested in three *per cent.* Savings Bonds 1955/65 which were purchased at par. Unless a change has since been made it seems that a switch could now profitably be made into a higher yielding investment.

## ROAD ACCIDENTS—AUGUST AND SEPTEMBER

Casualties from road accidents in September totalled 21,933. This was 1,534 more than in September last year, though the number killed was down by five. The number of persons slightly injured increased by 1,222 and the seriously injured by 317.

Final figures for August, give a total for all casualties of 23,765, of which 408 were fatal ; 5,687 were serious ; and 17,670 were slight. There were 49 fewer deaths than in August, 1953, but there was an increase of 1,711 in the injured.

One disturbing feature of the figures for the first eight months of 1954 has been the increase in the number of casualties during the hours of darkness. These have gone up by 5¼ *per cent.*, which more than counterbalances a small decrease of ·3 *per cent.* in casualties in daylight. On the other hand, in the first eight months of this year there were 136 fewer fatal casualties among children, a decrease of 24 *per cent.* when compared with the same period last year, and a drop of 961 (or three *per cent.*) in the total child casualties during this period.

## WALES AND MONMOUTH

The report of government action in Wales and Monmouth for the year ended June 30, includes a general survey of the industrial position and it is noted that throughout the year the monthly returns of unemployment showed decreases in comparison with the previous year, but there are still difficult and stubborn problems of local unemployment in some areas particularly in parts of the rural counties in the north-west. These are being closely studied. There are also less persons

registered under the Disabled Persons (Employment) Act due mainly to men failing to renew their registration after satisfactory resettlement. In the section of the report on health it is stated that there has been a general improvement in the nursing position both domiciliary and hospital except in mental hospitals and mental deficiency institutions which show little change and the problem of relieving the shortage of nursing staff there is still being examined. But in spite of this the number of beds for mental patients has increased by 687. The section on education contains an interesting account of the development in the teaching of Welsh as a second language. In the years before 1925 the Welsh Department of the Board of Education did much to encourage local education authorities to teach the Welsh language and to use Welsh as a medium of instruction in their schools. The departmental committee set up in that year to inquire into the position of Welsh in the educational system of Wales had, however, to emphasize in its report that more vigorous policies of bilingual teaching were necessary in the schools if the language were to be saved. In succeeding years the Welsh Department, through pamphlets, courses for teachers, conferences and reports, constantly urged this great need upon responsible opinion in Wales. A circular issued by the Welsh Department to mark St. David's Day, 1953, assumed support for the general policy that Welsh as well as English should be taught in the schools of Wales, having due regard to the responsibilities of the local education authorities in this matter. It urged local education authorities and schools to seek to apply this policy in the light of the varying linguistic characteristics of their areas, of the homes of the pupils, and of the pupils' abilities to profit from such instruction. Not all local education authorities have yet accepted the principle affirmed there. In some areas a linguistic policy is being followed in the primary schools, and as a result there has been over the country as a whole a substantial increase in recent years in the teaching of Welsh as a second language. It is mainly in Anglicized Wales that no Welsh is taught, and to some extent this is due to the lack in these areas of teachers qualified to teach Welsh. Yet some primary schools near the English border, and some within completely Anglicized parts, have been remarkably successful in teaching Welsh as a second language. One of the main hopes for the language is that the methods of these teachers will become better known and their example more widely followed. Some authorities have endeavoured to relate the teaching of Welsh as a second language to their examination requirements for secondary schools. It is felt, however, that there is a danger that the effective teaching of Welsh as a living language may be subordinated to the requirements of a formal test, with insufficient time to oral work. The teaching of Welsh as a second language is, therefore, still at a formative stage. It is now 50 years since the Ministry, the local education authorities and the teachers of Wales sought to establish a bilingual policy. At the present stage the position of Welsh as a second language is more satisfactory in those areas where a good proportion of the population speak Welsh in normal intercourse than in those where Welsh has to be taught almost entirely as a second language, but, given an early increase in the numbers of exemplars of sound second language teaching, it is suggested in the report that there is every hope of a rapid improvement in the position in all areas.

# LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 98

## IT PAYS TO GET ADVICE

A Wimbledon resident appealed unsuccessfully at Windsor quarter sessions on October 1 last, against an order made by Windsor petty sessions in May last, requiring him to pay a sum of £15 and costs consequent upon a complaint by Windsor corporation under s. 293 of the Public Health Act, 1936.

The matter arose in the first place because the appellant failed to comply with a notice served by the corporation under s. 45 of the Act to carry out work at a house in Parsonage Lane, Windsor. The council thereupon carried out the work themselves and proceeded to recover the cost of the work from the appellant.

It was stated at the hearing that the property had reached the appellant by way of an assent made by the personal representatives of a deceased life tenant. The appellant took proceedings in Windsor county court against the tenant of the property, but was unable to get possession and as he had taken no steps to obtain legal advice it might be said, suggested counsel for the local authority, that as he was unable to exercise the right of ownership, he did not believe himself to be the owner.

The appellant argued that as the assent had not been executed by him, but only by the personal representatives, he was not bound to take the property transferred by it, and he further said that the rents from the property, which he had received in the interim, as proved by the corporation, he was no longer taking.

The learned recorder, in dismissing the appeal with costs, pointed out the folly of not having taken legal advice in consequence of which omission the appellant had run himself into much more expense than he need have done.

*COMMENT*

Appeals under the Public Health Act are becoming less common, and the case outlined above illustrates some of the difficulties which may encompass a layman who is so ill-advised, when entangled in the provisions of this Act, as not to seek advice.

It will be recalled that s. 45 of the Act is the section which entitles a local authority to require the repair of defective closets in buildings, and in default of action by the owner there is power for the local authority to do the work itself.

Section 293 is the section under which a council is empowered to recover expenses incurred by it under the Act as a civil debt and the order for payment of such debt may be made by a magistrates' court by virtue of s. 50 of the Magistrates' Courts Act, 1952.

(The writer is indebted to Mr. J. E. Siddall, LL.M., D.P.A., town clerk, Windsor, for information in regard to this case.) R.L.H.

No. 99

## A DISHONEST TELEPHONE OPERATOR

A night telephone operator pleaded guilty at Sevenoaks magistrates' court on October 29 last to two charges alleging a contravention of s. 1 of the Falsification of Accounts Act, 1875. The particulars of the charges averred that upon two dates in August last the defendant, being an officer or servant to the Postmaster-General, wilfully destroyed two telephone tickets relating to telephone calls made from his own telephone number.

For the prosecution, it was stated that the defendant, whilst on night duty and engaged in sorting telephone tickets from which subscribers' accounts are made up, extracted and destroyed tickets relating to his own telephone number, thereby avoiding charges. Defendant admitted having followed this practice over a period of months, but stated that the total gain had been in all a very few shillings.

Defendant was fined £2 on each charge and ordered to pay £1 1*s*. costs.

*COMMENT*

The writer believes that charges of this nature, at any rate in relation to telephone operators, are very rare, and it is satisfactory that this should be so for it would appear to be a relatively simple matter for an operator on night duty to behave in a manner similar to that outlined above.

Section 1 of the Act of 1875 provides for a maximum of seven years' imprisonment for any clerk, officer or servant, who wilfully and with intent to defraud, destroys, alters or falsifies any book, paper, account, etc., belonging to his employer. By s. 19 of the Magistrates' Courts Act, 1952, the offence is triable summarily with the consent of the accused.

(The writer is indebted to Mr. E. H. C. Platt, clerk to the Sevenoaks justices, for information in regard to this case.) R.L.H.

No. 100.

## INSUFFICIENT BRITISH FILMS SHOWN

A limited company carrying on business as cinematograph exhibitors was convicted for the second time on November 2 last, of an offence under the Cinematography Films Act, 1948. The hearing was at Ystrad magistrates' court and the particulars of the charge alleged that the company, in the quota period commencing on October 1, 1951, had failed to exhibit at the Gaiety Cinema, Treherbert, a sufficient quota of British films contrary to s. 1 of the Act.

For the prosecution, it was stated that in respect of the quota period commencing on October 1, 1951, and ending on September 30, 1952, instead of the prescribed quota of 25 *per cent.* for supporting programme films, the quota achieved by the company was only 5·1 *per cent.*

For the company, which pleaded guilty, it was stated that cinemagoers in the Rhondda mining village of Treherbert preferred "Old Mother Riley" films to "Hamlet." Defending solicitor added that the public "with some perversity" was determined not to like British films.

The company was fined £25 and ordered to pay 30 guineas costs.

*COMMENT*

Section 1 of the Act of 1948 (which is to expire on September 30, 1958) provides that in each quota period exhibitors are to show such percentage of British films as are prescribed by order made under the Cinematograph Films (Quotas) Order, 1948, and at the present time 25 *per cent.* is the prescribed percentage of the total exhibited length of film which must be British. An escape clause is provided by s. 1 (6) of the Act which provides that if an exhibitor fails to comply with any of the requirements of the section, he shall be guilty of a quota offence unless the Board of Trade certifies that his failure was due to circumstances beyond his control. Section 11 of the Cinematograph Films Act, 1938, as amended, provides for a maximum penalty of £250 on summary conviction and £500 on conviction on indictment.

There is a further provision that a person twice convicted of an exhibitor's offence may have his exhibitor's licence revoked in respect of the theatre in relation to which the offence has occurred.

Subsection (3) of s. 11 empowers the initiation of summary proceedings for a quota offence at any time within two years after the end of the quota period in relation to which the offence has occurred. It will be seen that the prosecution in this case did not have much time in hand.

(The writer is greatly indebted to Mr. D. Leonard Davies, clerk to the Miskin Lower justices, for information in regard to this case.)

R.L.H.

**PENALTIES**

Chester Assizes—October, 1954. Rape—three charges. 18 years' imprisonment each charge. Defendant, a 44 year old builder's labourer, with previous convictions for offences other than assault or indecency.

Bristol—October, 1954. Selling a scone not of the quality demanded. Fined £5 to pay £1 17*s.* 6*d.* costs. Defendant, a baker, supplied scones to a grocer's shop. A purchaser from the grocer of some scones found an inch long nail in one of them. The bakers had been trading for 98 years and it was believed there had never been a previous conviction.

Leeds—November, 1954. Causing grievous bodily harm. Two years' probation, to pay £3 9*s.* 6*d.* costs. Defendant, a 25 year old mother of a young child, punched her husband in the face when he remonstrated because his tea was not ready. He pushed her away whereupon she threw five pints of boiling water over him and then hit him with the pan which had contained the water.

# THE WEEK IN PARLIAMENT

**From Our Lobby Correspondent**

The Secretary of State for the Home Department intimated in the Commons that the question of whether the horror comics come under the present law of obscenity was being investigated.

Major Lloyd George told questioners that the deputation led by the Archbishop of Canterbury had suggested that in addition to voluntary action by parents, teachers and the publishing and distributive trade, legislation was necessary on the lines of that which had been passed in other Commonwealth countries. He was considering those and other proposals, but did not expect to be able to make a further statement before the end of the present session. (Note : The new session opens on November 30.)

Mr. Norman Dodds (Dartford) asked : " Will the Minister state if consideration has been given to having a test case in the courts, rather than making a decision about legislation ; and, if that has been considered, if there is any hope of such a test case being undertaken ? "

Major Lloyd George: " It is not for me to decide that. This matter is being looked into as a matter of urgency, and no time will be lost."

Mr. M. Edelman (Coventry N.) : " Is it not the case that the sadism of horror comics is essentially and inherently of the nature of pornography, and, that being so, would it not be desirable to accept the suggestion for a test case, in order to establish whether sadistic pornography of this kind does, in fact, come under the existing law of obscenity ?"

Major Lloyd George: " That is a matter which we are looking into, but it is not for me to institute proceedings."

Mr. K. Robinson (St. Pancras N.) asked the Secretary of State if he had yet reached a decision on the need for legislation to amend the law of obscene libel.

Major Lloyd George replied that in consultation with other Ministers he was examining the law relating to obscene publications, and he would make a statement when they had completed that examination.

Mr. Robinson: " In the meantime, will the Minister give assurances that this campaign, which I fully support, against horror comics will not be allowed to obscure the need for clarification and, indeed, liberalization of the present law of obscenity relating to adults ? "

Major Lloyd George: " I cannot comment on the actual law, but I can assure the hon. Member that the one matter will not interfere with the other."

**POLICE PROSECUTIONS' COSTS**

Mr. H. Hughes (Aberdeen N.) asked the Secretary of State the practice of the metropolitan police with regard to the recovery of costs and expenses from a person against whom a prosecution had failed.

The Secretary of State replied that he was not aware that any such case had arisen in the metropolitan police district, and there was accordingly no practice. Should such a case arise, it would be decided on its merit.

Mr. Dodds asked the Secretary of State to make a statement on the case of Mr. E. P. Dimmick, 28 Woodlands Park, Bexley, who had only been able to recover £5 5*s.* costs against the metropolitan police, when the actual expenses of his defence amounted to £17 16*s.* ; and, in view of the fact that the evidence showed that the prosecution ought never to have been brought, if he would arrange for the reimbursement of the balance of the expenses.

Major Lloyd George replied that he was causing inquiries to be made about the case.

# PERSONALIA

**APPOINTMENTS**

Mr. Roger Sinclair Spackman, LL.B., has been appointed assistant solicitor for Malden and Coombe, Surrey, borough council. Mr. Spackman, who was admitted in July, 1951, is at present in a similar capacity with Southwark borough council.

Mr. John James Wheeler, at present a salaried partner with Farrer & Co., solicitors, of London, has been appointed assistant solicitor for Lowestoft, Suffolk, borough council. Mr. Wheeler was admitted in June, 1933.

Mr. John Frederick Wilton Sims, M.A. (Oxon.) Hons. (3rd Class Jurisprudence) has been appointed senior assistant solicitor to Hove, Sussex, borough council, taking up the position in December. Mr. Sims, who was admitted in March, 1950, is at the moment assistant solicitor for Colchester, Essex, borough council.

Mr. Douglas King, formerly a member of the magistrates' clerk's staff at Rotherham has been appointed as second assistant to Mr. Johnson, the clerk to the Blackpool justices. Mr. King has been succeeded at Rotherham by Mr. S. G. Jones who has for many years been employed by the West Riding county council and is at the moment on the staff of the welfare committee at Barnsley.

**RETIREMENTS**

Mr. Arthur John Albert Orme, chief clerk to Bristol city magistrates since 1934, is retiring early next year. Mr. Orme was admitted in 1926, after serving his articles under Mr. Josiah Green, then town clerk of Bristol, in the corporation's legal department. For a number of years Mr. Orme prosecuted in the Bristol courts on behalf of the town clerk's department. He was appointed deputy clerk to the magistrates in 1932, becoming chief clerk two years later.

Mr. L. G. Baum, deputy chief constable of Cumberland and Westmorland is to retire at the end of this month, after 33 years' service in the police force. Mr. Baum started his career at Workington. Promotions took him to Maryport, Wigton and Penrith. He became deputy chief constable in January, 1951.

**OBITUARY**

Mr. Robert Abercromby Gordon, Q.C., recorder of Margate, Kent, from 1936 to 1944, has died at the age of 80. Mr. Gordon was called to the bar by the Inner Temple in 1904 and later became a member of the south-eastern circuit and London Sessions. He was appointed a Bencher of the Inner Temple in 1931.

Mr. M. V. H. Rodber, clerk to Yeovil, Som., rural district council for 34 years, has died. Mr. Rodber succeeded his father as clerk in 1914, and held the office until his retirement in 1948. During most of that time, Mr. Rodber was also superintendent registrar.

Mr. H M. Kerslake, formerly chief constable of Southend-on-Sea, Essex, has died. He was chief constable of Durham from 1907 to 1911, and of Dewsbury, Yorks., from 1911 to 1914. Mr. Kerslake retired in 1935.

Mr. William Walter Parsons, first borough treasurer at the incorporation of the borough of Rugby, Warwick, in 1932, has died at the age of 73.

Mr. Augustus Noble Hand, formerly a Judge of the United States Circuit Court, has died at the age of 85. Mr Hand was a member of the council and executive committee of the American Law Institute.

# SENSE AND SENSIBILITY

Among the professions in which men and women engage, two bring them into closest contact with mankind—the practice of medicine and the practice of the law. Some would add a third—journalism ; but that, we venture to think, does not involve contact in the same sense with human beings. The journalist's business is to observe and record events and the group-reactions of people in the mass ; he views mankind through a telescope—sometimes, perhaps, in a distorting mirror. The lawyer and the doctor must make a microscopic examination ; their dealings are with the individual ; their work is to analyse facts or symptoms, to elicit a principle and diagnose a cause, and to prescribe a proper remedy. Troubles that will not yield to therapeutic treatment are the care of the advocate or the surgeon ; but they too must have regard to the individual idiosyncrasies of client or patient.

For the lawyer, as for the doctor, the proper study of mankind is man—humanity in the fullest moral sense. Kindliness and compassion are prime essentials, and there is a core of truth within the exaggeration of W. S. Gilbert's description of the tender-hearted attorney, Baines Carew :

> " Whene'er he heard a tale of woe
> From client A or client B,
> His grief would overcome him so
> He'd scarce have strength to take his fee.
>
> It laid him up for many days
> When duty led him to distrain ;
> And serving writs (although it pays)
> Gave him excruciating pain."

No one should practice as a solicitor or barrister, any more than as a physician or surgeon, unless he is actuated by a desire to serve and help his fellow-men.

These are ideals to which all will readily subscribe ; to put them into practice is not always easy. In those cases where only the most drastic and painful remedies can be effective, the professional man finds himself in a dilemma from which only tact and experience can extricate him. On the one hand he must beware that compassion does not degenerate into complaisance ; he is giving bad service if he becomes a " yes-man," if his sympathetic feelings lead him to yield to his client's every whim, against his own better judgment. On the other hand he may do equal harm by going to the opposite extreme and adopting a manner so coldly aloof and impersonal that the confidence which should be born of a close professional relationship is impaired or destroyed. An extreme case, perhaps, was Mr. Pickwick's unsatisfactory interview with the eminent Serjeant Snubbin :

> " ' Perhaps you will take Mr. Pickwick away,' said the Serjeant, ' and —and—hear anything Mr. Pickwick may wish to communicate. We shall have a consultation, of course.' With this hint that he had been interrupted quite long enough, Mr. Serjeant Snubbin, who had been gradually growing more and more abstracted, applied his glass to his eyes for an instant, bowed slightly round, and was once more deeply immersed in the case before him."

It calls for a high degree of skill and a nice sense of judgment to steer safely between the Scylla of rigidity and the Charybdis of irresolution.

Every lawyer has had experience of the unco-operative client —the litigant who conceals unpalatable facts or confuses obstinacy with firmness. There are quarrelsome people for whom a willingness to negotiate is a sign of weakness, to whose vocabulary conciliation and compromise are words unknown. Such clients subscribe to the popular fallacy that a solicitor is nothing more than a machine for setting litigation in motion, and to yield to their importunities is to invite disaster. There are eminent lawyers, judges and practitioners alike, by no means wanting in humanity, who regard the Legal Aid and Advice Act as no unmixed blessing. Unquestionably this piece of legislation has fulfilled a long-felt want in throwing open the Courts of Justice to those of humble means ; yet one need not hold reactionary views to join in deploring the " heads I win, tails you lose " attitude which it encourages in litigants who persist in fighting, instead of settling, a case that has been hopeless from the start.

Francis Bacon, sometime Lord Chancellor of England, has some trenchant things to say, in his essay *Of Judicature*, on the subject of " contentious suits, which ought to be spewed out as the surfeit of courts," and of " certain persons that are sowers of suits, which make the court swell and the country pine." Worst of all is—

> " the poller and extracter of fees ; which justifies the common resemblance of the courts of justice to the bush, whereunto while the sheep flies for defence in weather, he is sure to lose part of the fleece."

These vivid metaphors are strikingly apposite to some of the avoidable litigation that obstinate parties resort to in these times, secure in the knowledge that it is the tax-payer who will have to foot the bill.

Faced with the choice between failing to satisfy his client and losing a case which he knows is foredoomed, what is the conscientious practitioner to do ? Should he wash his hands of responsibility and enter the lists against his better judgment (taking care to get, in advance, a considerable payment on account), or should he resolutely decline to initiate proceedings which he regards as an abuse of the legal process ? Or should he take refuge in a masterly inactivity, ostensibly the result of a sympathy so profound, a commiseration so sincere, as to paralyse his wits and immobilize his energies in all that appertains to the case ? Whichever course he decides to adopt, the ultimate outcome will, we fear, be much the same as it was for the compassionate Baines Carew, whose emotions (at the recital of Captain Bagg's matrimonial troubles) proved altogether beyond his control :

> " ' Oh, woe ! oh sad ! oh dire to tell ! '
> Said Baines. ' Be good enough to stop.'
> And senseless on the floor he fell,
> With unpremeditated flop.
>
> Said Captain Bagg, ' Well, really, I
> Am grieved to think it pains you so.
> I thank you for your sympathy ;
> But—hang it !—come !—I say, you know ! '
>
> But Baines lay flat upon the floor,
> Convulsed with sympathetic sob :—
> The Captain toddled off next door,
> And gave the case to Mr. Cobb."

A.L.P.

# PARLIAMENTARY INTELLIGENCE

**Progress of Bills**

**HOUSE OF LORDS**

Tuesday, November 16

TOWN AND COUNTRY PLANNING BILL, read 3a

**HOUSE OF COMMONS**

Monday, November 15

PESTS BILL, read 3a.

# PRACTICAL POINTS

**All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.**

**1.—Husband and Wife**—*Maintenance order—Child included who is not a child of the marriage.*

A made a complaint to my justices that her husband B wilfully neglected to maintain her and her infant children and also deserted her and requested an order, *inter alia*, giving her the custody of the children of the marriage between A and B namely Y born in 1951 and Z born in 1954. At the hearing of the complaint A was legally represented. B was not represented but appeared in person. It appears that B went through a form of marriage with A whilst his lawful wife was alive and he was consequently convicted of bigamy and sentenced. B's lawful wife divorced him and in the year 1953 he was legally married to A. The child Z was born after the marriage to A but Y was born before that date. B did not question the fact that both children were his.

The court granted A an order purporting to give her, *inter alia*, the legal custody of Y and Z whilst under the age of 16 and B was, *inter alia*, ordered to pay to A a certain sum each week in respect of each child for maintenance. In drawing up the order there appeared to be some doubt as to whether or not the children were in fact the children of the marriage between A and B, and upon further inquiry it has been found that at the birth of Y in 1951 B was lawfully married to a third party, so that the subsequent marriage of A and B did not render Y legitimate—these facts were not brought up at the hearing.

It therefore appears that following the decision of *Harrison* v. *Harrison* [1951] 2 All E.R. 346; 115 J.P. 428, Y is not a child of the marriage and the court has no power to grant an order for its custody and maintenance. An order has now to be drawn and the question is whether such order as pronounced in court is wholly bad or bad only with respect to the portion relating to Y's custody and maintenance.

According to *Stone*, 86th edn., p. 259 "An order for payment of money may be bad in part and good for the residue." If therefore the order is good for the residue, should the order be drawn in accordance with the court's decision with the exception of Y's custody and maintenance. On the other hand if the order is wholly bad what steps should be taken to rectify the matter.

It also appears that A cannot obtain an order against B under the Bastardy Laws Amendment Act, 1872, having regard to the decision in *Mooney* v. *Mooney* [1952] 2 All E.R. 812; 116 J.P. 608.

STEBON.

*Answer.*

The order must be drawn in accordance with the decision as pronounced by the justices. The matter could be rectified on appeal by either party to the High Court. Alternatively, we think it permissible for the justices to entertain an application to vary the order under s. 53 of the Magistrates' Courts Act, 1952, when the justices could strike out the part of the order which refers to the custody and maintenance of Y.

There is a passage in the judgment of Lord Goddard, C.J., in *Mooney* v. *Mooney*, *supra*, from which it might be argued that where the married woman has been deserted by her husband she is in a different position from that of a woman who refuses to live with her husband, and might be regarded as a single woman, but the whole judgment seems to indicate that she would not be regarded as single *quoad* her husband.

**2.—Mental Deficiency**—*Defective charged with offence—Notice of intention to call medical evidence—Duty of police.*

I am an officer of the police and should be grateful for your opinion on the following:

Recently a female, aged 17 years, appeared at the magistrates' court in this borough, charged with larceny from a shop. She pleaded guilty and the magistrates, after hearing the evidence, adjourned the case for 21 days for a report from the probation officer. On her next appearance before the court, as a result of the probation officer's report, the girl was remanded by the magistrates for a further 14 days, in order that an inquiry could be made into her physical and mental condition, in accordance with s. 26 of the Magistrates' Courts Act, 1952.

A copy of a letter, addressed to the probation officer, has now been forwarded to me by the medical officer of health for the borough. This officer states that he has examined the girl and found her to be a feeble-minded person, who requires care, supervision and control for her own protection and is, therefore, subject to the provisions of the Mental Deficiency Act, 1913.

It has been suggested by the magistrates' clerk, that the police should serve notices under s. 8 (5) of the Mental Deficiency Act, 1913, in the normal way, and call the medical officer of health as a witness, to give evidence of the defendant's mental condition.

Whilst I am prepared to act in this manner, I would say that there was nothing in the girl's demeanour, when charged by the police, to suggest that she was a feeble-minded person. Consequently, no evidence was brought before the court, in the first place, by the prosecution as to her mental condition.

The fact that she is subject to the provisions of the Mental Deficiency Act, 1913, has been ascertained in consequence of the magistrates remanding her under s. 26 of the Magistrates' Courts Act, 1952.

I am of the opinion that the medical officer of health should have reported the result of his examination direct to the magistrates and not to the probation officer, and that any further action should be taken by the court, and not by the police.

I should be grateful if you would inform me whether, or not, you consider that I am correct in this assumption, and that it is not the duty of the police to serve notices in this case.

I should also be pleased to know whether the action to be taken would differ in any way, if the defendant had been sent to prison for medical examination. In the latter case, it is the custom for the prison doctor to communicate direct with the magistrates, and the police consequently, are not made aware of the result of the medical examination.

SILENUS.

*Answer.*

As the case was remanded for inquiry to be made by the probation officer, it was no doubt that officer who communicated with the medical officer, who not unnaturally sent his report to him, instead of sending it direct to the court. The court being now aware of the medical officer's opinion will need to have him called to give evidence as to the mental defectiveness, and it can require such evidence under s. 8 (2). The alleged defective and her parent are entitled to notice, and it seems to us proper, if the court signifies to the police that its intention is to hear medical evidence, for the necessary notices to be given by the police under s. 8 (5). It has been brought to the notice of the police that the defendant is regarded as a defective, and although it may be thought that the position is not precisely as contemplated by the words of s. 8 (5), we think the police might well assist by giving the notices. We believe this to be a not unusual practice. We agree that a report from a prison medical officer is usually sent direct to the court, but here again we believe it to be quite common for the court to intimate to the police that they desire medical evidence to be called and for the police to take all necessary action.

**3.—Private Street Works Act, 1892**—*Degree of benefit—Form of resolution.*

I should be glad of your opinion as to whether in a provisional apportionment prepared by the surveyor following a resolution:

"That in pursuance of the Private Street Works Act, 1892, a certain street be 'sewered, levelled . . . and made good. And that the expenses of such works be apportioned upon the premises fronting, adjoining or abutting on' the said street 'according to the respective frontages of such premises, regard being had to the amount and value of any such work already done by the various owners or occupiers of such premises',"

(*a*) It is (having regard to the wording of ss. 10 and 7 (*f*)) *infra vires* for the surveyor to prepare and the local authority to approve under s. 6 (2) an apportionment providing for the inclusion of allowances to particular frontagers only of the amount or value of any work already done by them or their predecessors, and

(*b*) (i) if your answer to (*a*) is in the affirmative, the extent to which the amount or value of work already done can be claimed by owners of different frontages who are successors in title to a common owner who actually carried out the works on some of the frontages only.

(ii) I should also be glad of your opinion as to the extent (if any) to which the words "by resolution approve the same respectively with or without modification or addition as they think fit" at the end of s. 6 (2) enable an authority, having merely approved the specification, etc., as prepared by the surveyor, to contend that they have thereby ratified without express reference thereto the inclusion in the scheme of matters not specified in the original resolution under s. 6.

PERSEUS.

*Answer.*

(*a*) Yes, in our opinion. The value of work done will be taken into account generally in the absence of the resolution by reducing the cost of the works; the resolution enables the value to be assigned particularly.

(*b*) (i) The successors in title to the common owner who did the work are, in our opinion, entitled to the work done by him so far as it concerns their frontage.

(ii) The provisional apportionment must be related to the resolution to make up the street ; *see* s. 6 (2) of the Act of 1892. If further works are required another resolution must be passed and a further provisional apportionment made.

**4.—Road Traffic Acts**—*Dangerous driving—Diabetic illness as a defence to a charge.*

A defendant is charged under s. 11 of the Road Traffic Act, 1930, with driving a car in a manner which was dangerous to the public. He pleaded not guilty.

Evidence given showed that in a street in a town he had driven the car over the pavement and collided with the wall of a house, backed away and driven in an erratic manner through the rest of the street. His car was followed by a motorist for some six or seven miles during which he continued to drive in an erratic manner on both sides of the road and finally the car broke down.

The defendant went into the witness box and said that he was a diabetic who had daily injections of insulin. That some few days before this occurrence the insulin dose had been increased under a doctor's advice and subsequently after this occurrence again reduced.

He said that he had no recollection of any of the incidents at all. He started from London in his car and the first incident occurred some 25 miles out of London. There is no suggestion that the defendant was in any way under the influence of drink.

The Bench were referred to a case of *Kay* v. *Butterworth* (1945) 110 J.P. 75 and to an unreported case of *Edwards* v. *Clarke* referred to at 115 J.P.N. 426.

No doctor was called for the defence and the case was adjourned at the request of the defence so that a doctor might be called.

It is thought that a sudden illness or a sudden occurrence such as is mentioned by Mr. Justice Humphreys in his judgment in *Kay* v. *Butterworth* would be a good defence but it will be noted that in the present case the defendant drove the car some miles while apparently under the influence of this disease.

Your opinion is requested as to whether if the magistrates are satisfied that what happened was the result of a diabetic attack this would be a good defence to this charge. J. MUROCAD.

*Answer.*

We think the answer depends entirely on whether the court accepts, after hearing medical evidence, that because of a sudden diabetic attack the defendant did not know that he was ill and had *no* knowledge of what occurred thereafter while the attack lasted. If they so find, we think this a complete answer to the charge. If, however, the court finds that the defendant became ill and realized it, and in spite of that he continued on his way in an effort to get home, we think he could be properly convicted. The matter is a difficult one, and involves consideration of a possible alternative charge under s. 15 (driving while under the influence of a drug).

**5.—Road Traffic Acts**—*Previous convictions—Proof, in absence of defendant, by endorsement on licence.*

At a recent court, a defendant was found guilty of a motoring offence, the penalty for which is greater where a second or third offence has been committed within a certain time.

The bench wished to see the defendant's licence, which had been sent to the court, the defendant himself not being present, and this licence disclosed previous offences, the commission of which made the defendant liable for the higher penalty.

The bench wished to avail themselves of this knowledge and impose a punishment only possible where such previous offences had been committed, but the clerk advised they had no power to do this.

The clerk's argument was that while the bench were entitled to see the driving licence for the purpose of increasing the fine up to the maximum amount permitted in the case of a first offence ; to go beyond that and impose a punishment only justifiable for second or subsequent offences, would necessitate the offences being strictly proved and the endorsements were not sufficient proof. As in another court the clerk advised the opposite, I shall be most obliged for your learned opinion on the point. J. SILEX.

*Answer.*

Section 33 (2) Road Traffic Act, 1934, makes the endorsement on a licence evidence of the conviction, equivalent to, for example, an extract from a court register. The need for evidence of identity remains. We think, however, by comparison with *Master* v. *White* [1910] 1 K.B. 665; 74 J.P. 106 that such evidence may be provided by proving that the defendant when stopped gave a certain name and address, and that a summons, with the requirement for the production of the driving licence of the person summoned, was served on a person of that name and that address, and that a licence bearing that name and address was duly received thereafter at the court, that licence so received bearing endorsement in question.

On such evidence we think the court could properly find the previous conviction duly proved and could impose the greater penalty appropriate to a subsequent conviction.

**6.—Small Dwellings Acquisition Act, 1899**—*Joint tenants—Husband and wife.*

The borough council have for the purposes of encouraging house ownership been making advances under the Small Dwellings Acquisition Acts. A committee of the council, following the custom of a local building society, are recommending that the advances shall only be made if husband and wife jointly join in the mortgage. This means of course that they must also be joint owners, a practice which is largely followed in this part of the country. One such advance at least has been made. The district auditor has raised a query as to whether such joint advances can legally be made and states that the Treasury Solicitor is understood to hold a view that it is not legally possible, as joint tenants would not satisfy the definition of "proprietor" in s. 10 (3) of the 1899 Act. If this interpretation of the word "proprietor" is accepted it will result, to a considerable extent, in defeating the main object of the Acts although paradoxically the Housing Acts appear to provide a way out. It is believed there is no case law on the subject to date. I would add that solicitors acting for the council have advised that it is quite in order.

Your opinion is invited whether :

(*a*) It is legally possible to make advances to joint tenants under the Small Dwellings Acquisition Acts.

(*b*) Would the position be different if the common practice in creating a joint tenancy, *i.e.*, conveying to the purchasers on trust for sale, is followed ?

(*c*) If, in fact, it is not possible, what steps should be taken to put in order the advance or advances already made, or whether any action is necessary or desirable.

(*d*) In the case of these advances, there would be any difficulty in realizing the security. P. "BIDDY."

*Answer.*

(*a*) Yes, in our opinion. The definition in s. 10 (3) of the Act is not exclusive of joint tenants. But the difficulty does not arise from this : *see* P.P. 10 at 115 J.P.N. 96. We still prefer our own opinion, but as a practical matter *see* what we there advised.

(*b*) The usual form we assume will be followed.

(*c*) In the particular case, we should leave well alone.

(*d*) No, in our opinion.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. *(Contd.)*

## SURREY MAGISTRATES' COURTS COMMITTEE

**Wallington Petty Sessional Division**

**Appointment of Justices' Clerk's Assistant**

APPLICATIONS are invited for the above whole-time appointment from men with experience of the work of a Justices' Clerk's Office. Applicants must be competent shorthand typists and must have completed their National Service. The salary offered will be in accordance with the new Grade I of the A.P. & T. Scales (£500×£20—£580, plus £30 London Weighting). The appointment is superannuable and will be subject to one month's notice on either side and the successful candidate will be required to pass a medical examination. Applications in own handwriting, stating age, qualifications and experience, with the names of three referees, should be sent to the Clerk to the Justices, 18 Stanley Park Road, Wallington, Surrey by December 7, 1954. Letters marked "Assistant."



## BOROUGH OF DARWEN

**Appointment of Deputy Town Clerk**

APPLICATIONS are invited from Solicitors with Local Government experience for the appointment of Deputy Town Clerk. Salary in accordance with the new Scale A.P.T. V. £750—£900, commencing at £840 per annum.

Housing accommodation available if required.

Applications, giving particulars of age, experience and qualifications, together with the names and addresses of two referees, to be delivered to the undersigned endorsed "Deputy Town Clerk" not later than Monday, December 13, 1954.

C. C. BYERS,
Town Clerk.

Town Clerk's Office,
Darwen.



## HAMPSHIRE

APPLICATIONS are invited from solicitors with experience in Local Government work for the post of Assistant Solicitor on the staff of the Clerk of the County Council at a salary of £1,050×£50—£1,250. The commencing salary will be fixed in accordance with qualifications.

The post is pensionable and the appointment will be subject to the submission of a satisfactory medical report. In approved cases the County Council are prepared to assist newly appointed staff to meet removal and other expenses.

Applications, giving full particulars of age, education and experience, together with the names of two referees, should reach the Clerk of the County Council, The Castle, Winchester, by December 16.

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## LANCASHIRE NO. 7 COMBINED PROBATION AREA

**Appointment of Male Probation Officer**

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer.

Applicants must not be less than 23 nor more than 40 years of age except in the case of a serving Probation Officer.

The appointment will be subject to the Probation Rules, 1949 to 1954, and the salary will be according to the scale prescribed by those rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications, and experience, together with not more than two recent testimonials, must reach the undersigned not later than Tuesday, December 7, 1954.

ALBERT PLATT,
Secretary to the Probation Committee.

Boston House,
99, Warrington Street,
Ashton-under-Lyne, Lancs.

## COUNTY BOROUGH OF WOLVERHAMPTON

**Appointment of Female Probation Officer**

APPLICATIONS are invited for the appointment of whole-time Female Probation Officer for the County Borough of Wolverhampton.

Applicants must be not less than 23 years, nor more than 40 years of age, except in the case of serving Officers.

The appointment and salary will be in accordance with the Probation Rules, and the successful applicant will be required to pass a medical examination.

Applications, stating age, education, qualifications and experience, together with the names and addresses of two referees, should be received by the undersigned not later than December 11, 1954.

T. T. CROPPER,
Secretary of the Probation Committee.

48 Waterloo Road,
Wolverhampton.

## BOROUGH OF CLITHEROE

**Appointment of Town Clerk**

APPLICATIONS for this appointment are invited from solicitors with local government experience. Commencing salary £840 per annum.

Salary scale and conditions of service in accordance with Recommendations of the Joint Negotiating Committee for Town Clerks, etc. Appointment subject to three months' notice on either side.

Successful applicant required to pass a medical examination and take up duties on February 1, 1955.

Applications, giving names and addresses of two persons to whom reference may be made, to reach the undersigned not later than noon on Saturday, December 4, 1954.

G. HETHERINGTON,
Town Clerk.

The Castle,
Clitheroe, Lancs.

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